

ASHEVILLE DIVISION

1:16-cv-406-RJC

BRYAN KEITH NOEL,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on the following pro se motions by Petitioner Bryan Keith Noel, following this Court’s dismissal of his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence as untimely: (1) “Combined Motion and Brief for Relief from a Judgment or Order Pursuant to the Federal Rules of Civil Procedure 60(b) and Motion for an Evidentiary Hearing,” (Doc. No. 27); (2) and “Exhibit JJ to the [Rule 60(b)] Motion and Motion for Return of Original Exhibits filed in 1:17cv271,” (Doc. No. 28).

The Court will deny Petitioner’s “Combined Motion and Brief for Relief from a Judgment or Order Pursuant to the Federal Rules of Civil Procedure 60(b) and Motion for an Evidentiary Hearing” for the same reasons that the Court denied as untimely Petitioner’s previously filed motion to vacate. See (Doc. No. 13). Specifically, despite his contentions, Petitioner has not met the high burden of proving actual innocence for purposes of the one-year statute of limitations. Further, Petitioner has not shown that he is entitled to an evidentiary hearing in this matter.

As for Petitioner’s “Exhibit JJ to the [Rule 60(b)] Motion and Motion for Return of

Original Exhibits filed in 1:17cv271,” Petitioner needs to file the motion for return of original exhibits in Case No. 1:17cv271, and he must identify the attachments that he would like to be returned to him in that action.

IT IS HEREBY ORDERED that:

(1) Petitioner’s “Combined Motion and Brief for Relief from a Judgment or Order

Pursuant to the Federal Rules of Civil Procedure 60(b) and Motion for an Evidentiary Hearing,” (Doc. No. 27), and “Exhibit JJ to the [Rule 60(b)] Motion and Motion for Return of Original Exhibits filed in 1:17cv271,” (Doc. No. 28), are **DENIED**.

Signed: June 19, 2018

A handwritten signature in dark ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
United States District Judge

